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CUMULATIVE DIGEST

CH. 16
DISORDERLY, ESCAPE, RESISTING AND OBSTRUCTING OFFENSES

§16-1 Disorderly, Bribery, and Intimidation Offenses
- **(a) Generally**
- **(b) Disorderly Conduct**
- **(c) Official Misconduct**
- **(d) Mob Action (currently no updates)**
- **(e) Interference with Judicial Procedure; Harassing and Obscene Communication Act**
- **(f) Threatening a Public Official (currently no updates)**

§16-2 Resisting, Obstructing, and Offenses Against Police Officers

§16-3 Escape

§16-4 "Hate Crimes" (currently no updates)

Top

§16-1
Disorderly, Bribery, and Intimidation Offenses

§16-1(a)
Generally

People v. Chai, 2014 IL App (2d) 121234 (No. 2-12-1234, 8/19/14)

To obtain a conviction for criminal trespass to real property under 720 ILCS 5/21-3(a)(2), the State must establish beyond a reasonable doubt that the defendant entered the land of another after receiving notice "from the owner or occupant" that such entry was forbidden. A "knowing" mental state applies to all of the elements of the offense.

The court concluded that the evidence was insufficient to establish guilt beyond a reasonable doubt where the notification that defendant was barred from the property came not from an owner or occupant, but from a police officer who had been called to remove defendant after he lost his temper at the Department of Motor Vehicles. Defendant returned to the DMV office nearly three months later, and became angry when his wife was not allowed to take a road test for her driver's license. The manager of the facility recognized defendant as the man who had caused the earlier incident, called police, and asked that defendant be arrested.

The court acknowledged that if an owner or occupant of the property asks an officer to inform the defendant not to return, the notification requirement of §5/21-3(a)(2) is satisfied. Here, however, there was no indication that any occupant of the facility instructed police to give defendant such notice. The court declined to find that whenever a public employee calls police to assist in removing an angry patron from a public facility, there is an implied request that police inform the patron that he or she is not to return.

Defendant's conviction for criminal trespass to real property was reversed.

(Defendant was represented by Assistant Defender Barb Paschen, Elgin.)

People v. Diomedes, 2014 IL App (2d) 121080 (No. 2-12-1080, 6/16/14)

1. At the time of defendant's conviction, 720 ILCS 5/26-1(a)(13) provided that disorderly conduct occurred when one knowingly transmitted or caused to be transmitted "a threat of destruction of a school building or school property, or a threat of violence, death, or bodily harm directed against persons at a school, school function, or school event, whether or not school is in session." The court found that the knowledge requirement applied to all elements of subsection (a)(13). Thus, the offense required that the actor not only "knowingly" transmit a message, but also that he know that what was being transmitted was one of the prohibited threats.

Under the circumstances of this case, to establish a violation of §26-1(a)(13) the State was required to prove beyond a reasonable doubt that defendant knowingly transmitted a threat directed against a dean at his high school, and not merely that defendant knew that he was transmitting a message.

The court concluded that a rational trier of fact viewing the evidence most favorably to the State could have found beyond a reasonable doubt that defendant knowingly transmitted an email which he knew contained a threat directed against the dean. Therefore, the State satisfied its burden of proof.

2. Generally, the First Amendment prohibits government from proscribing speech

because it disapproves of the ideas that are expressed. Restrictions on some forms of speech are permitted, however, including speech which contains a "true threat." True threats are statements intended to "communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals."

3. The court rejected defendant's argument that the email in question did not constitute a true threat and therefore could not support a conviction for disorderly conduct based on transmitting an emailed threat. Acknowledging a conflict in the case law, the court noted that whether a communication constitutes a true threat may be determined under one of two objective tests - whether a reasonable speaker would have foreseen that the communication would be interpreted as a threat, or whether a reasonable recipient would view the communication as a threat. The court found that the "reasonable speaker" test essentially encompasses the "reasonable recipient" test because it requires consideration of how others might interpret the communication.

The court concluded that even applying the defendant's preferred reasonable speaker approach, the email constituted a true threat. The court acknowledged that some factors weighed against finding that defendant made a true threat, including that the email was not as graphic as some communications found to constitute true threats in other cases, the message was not transmitted directly to the target of the alleged threat, and defendant had not made any specific prior threats against the target. The court concluded, however, that other factors supported a finding that the communication was a true threat, including that defendant had been expelled from high school for making threats on Facebook, the sole recipient of the email regarded it as a threat, defendant wanted to leave the alternative school environment in which he had been placed, defendant stated that he wanted to see the dean of his high school dead, and defendant had compiled a list of people whom he was going to kill. Under these circumstances, a reasonable speaker should have understood that the communication would be interpreted as a threat.

The conviction for disorderly conduct was affirmed.

(Defendant was represented by Assistant Defender Kathleen Weck, Chicago.)

People v. Gabriel, 2014 IL App (2d) 130507 (No. 2-13-0507, 12/22/14)

An order of protection required that defendant: (1) stay at least 1000 feet from the petitioner's residence and school, and (2) refrain from entering or remaining at the College of DuPage while the petitioner was present. Defendant was arrested as he was leaving the campus of the College of DuPage. No evidence was presented that the petitioner was on the campus that day.

In convicting defendant of violating the order of protection, the trial court concluded that the order was unambiguous and required defendant to stay off the campus at all times, without regard to whether the petitioner was present. The Appellate Court reversed, finding that the evidence was insufficient to establish that defendant knowingly violated the order of protection.

1. The Illinois Domestic Violence Act provides that an order of protection may require the respondent to "stay away from petitioner . . . or prohibit [the] respondent from entering or remaining present at petitioner's school, place of employment, or other specified places at times when petitioner is present." 750 ILCS 60/214(b)(3). Although the order of protection in this case was ambiguous, the court assumed that the trial judge intended to enter an order that complied with the statute. Because the statute would not authorize an order that precluded defendant from entering the campus when the petitioner was not there, the trial court's interpretation would result in an order of protection that was beyond the scope of the

statute.

The court concluded that the order should be construed as requiring defendant to stay away from the College of DuPage only when the petitioner was present. In the absence of any evidence that the petitioner was on campus at the time in question, the evidence was insufficient to show that the order of protection was violated.

2. Although defendant did not argue that the trial court's interpretation of the order exceeded the scope of the statute, the court elected to reach the issue. The court noted that defendant challenged the trial court's interpretation of the order, the issue concerned the legal authority of the trial court to issue an order of protection, and the State was given an opportunity to respond.

3. In the course of its opinion, the court noted that the order of protection utilized a standard form order that is used throughout the State. "To avoid further confusion on the part of courts, law enforcement officials, and especially the members of the public who may in the future obtain or be subjected to orders under the Act, we advise that the form order be amended as needed."

The court also noted a conflict in authority concerning whether ambiguous orders of protection should be construed in the defendant's favor. The court declined to decide this issue, finding that the trial court's interpretation was improper no matter what standard was used.

(Defendant was represented by Assistant Deputy Defender Paul Glaser, Elgin.)

People v. Hinton, 402 Ill.App.3d 181, 931 N.E.2d 769 (3d Dist. 2010)

1. Under 720 ILCS 5/12-30(a)(2), a person commits the offense of violating an order of protection when he commits an act prohibited by a valid order of protection after obtaining "actual knowledge" of the contents of the order. Under 750 ILCS 60/223(d)(4), "actual knowledge" can be shown by service, notice, or any other means demonstrating actual knowledge of the contents of the order. A conviction for violating an order of protection requires actual knowledge of the contents of the order; constructive knowledge is insufficient.

2. Because the State failed to present evidence that defendant had actual notice, the court reversed defendant's conviction for violating an order of protection. The State presented evidence that: (1) defendant was personally served with an emergency order of protection while he was incarcerated in the Will County Jail, (2) the emergency order indicated that a hearing on a plenary order of protection would be held approximately three weeks later, (3) the order indicated that a plenary order could be entered by default if defendant failed to appear, and (4) a plenary order of protection was granted at that hearing.

However, defendant was still incarcerated on the date of the hearing, and the State failed to show that he was taken to court or informed of what had transpired. "The State had the burden to present some evidence from which the jury could find that the defendant was aware and conscious of the order of protection, i.e., that he had actual knowledge."

(Defendant was represented by Assistant Defender Verlin Meinz, Ottawa.)

People v. Holm, 2014 IL App (3rd) 130582 (No. 3-13-0582, 12/8/14)

720 ILCS 125/2(a) creates the offense of interfering with the lawful taking of wildlife or aquatic life where one obstructs or interferes with hunters or fishermen with the specific intent to prevent the lawful taking of animals. However, §125/2(a) exempts from the offense "landowners, tenants, or lease holders exercising their legal rights to the enjoyment of land, including, but not limited to, farming and restricting trespass."

As a matter of first impression, the court concluded that defendant was entitled to the above exemption where he remained at all times on the property where he resided, but drove

an ATV along the fence while two men were attempting to hunt on adjoining property. At the same time, defendant's son walked along the fence line and shouted, whistled, clapped his hands, and made other loud noises. When questioned by a conservation officer, defendant admitted that he knew the other two men were attempting to hunt.

The court concluded that the actions of defendant and his son constituted the legal use of their own land, and that the plain language of §125/2 therefore exempted them from the offense. The court also noted that §125/2 was intended to apply to protesters at game preserves and hunting clubs, and not to persons who legally use their own property.

The court rejected the argument that the defendant was not engaged in the legal use of his land because his conduct was performed with the specific intent of preventing hunters on adjacent lands from taking animals. Because the statute applies only where the defendant has the specific intent to prevent hunters from taking wild animals, "[t]he exemption [for acts committed on one's land] is meaningful only if it applies to exempt defendants who acted with the intent to prevent but did so through the legal use of their own property."

People v. Kucharski, 2013 IL App (2d) 120270 (No. 2-12-0270, 3/29/13)

1. 720 ILCS 135/1-2(a)(1) creates the offense of harassment through electronic communications where electronic communications are used to make an "obscene" comment "with an intent to offend." The court rejected the argument that the statute violates the First Amendment because it is a content-based limitation which prohibits only obscene speech which is intended to offend, and not any other obscene speech.

The court found that §1-2(a)(1) is an attempt to regulate conduct which accompanies prohibited speech, and does not seek to regulate speech itself. Thus, the statute is constitutional.

2. The court rejected the argument that a communication is "obscene" under §1-2(a)(1) only if it satisfies the definition of "obscenity" established in **Miller v. California**, 413 U.S. 15 (1973) and embodied in the Illinois obscenity statute (720 ILCS 5/11-20(b)). The court concluded that **Miller** and §11-20(b) were intended to provide a definition of "obscene" for purposes of controlling the commercial dissemination of obscenity. Because the legislature did not intend to apply the definition of §11-20(b) to the electronic harassment statute, the court concluded that the ordinary dictionary definition of "obscene" should be employed. Thus, for purposes of the electronic harassment statute, the term "obscene" is defined as "disgusting to the senses" or "abhorrent to morality or virtue."

3. The court rejected the argument that 720 ILCS 135/1-2(a)(2) is unconstitutionally vague and overbroad on its face. Section 1-2(a)(2) creates the offense of harassment through electronic communications for interrupting, "with the intent to harass, . . . the electronic communication service of any person."

The court concluded that the harassment through electronic communication statute prohibits conduct rather than speech, and does not affect First Amendment rights. Therefore, the statute is not unconstitutional on its face. The court also rejected the argument that the statute is vague because the term "interrupt" is undefined, concluding that when the term is given its ordinary dictionary meaning the statute is sufficient to give adequate notice and prevent arbitrary enforcement.

The court also rejected the argument that the electronic harassment statute violates the First Amendment because it restricts speech that is merely "annoying." The court concluded that to come within the scope of the word "harass," the interruption must be made "with the intent to produce emotional distress or discomfort substantially greater than mere annoyance."

4. 720 ILCS 5/16D-5.5(b)(1) provides that a person "shall not knowingly use or attempt to use encryption" to "commit, facilitate, further, or promote any criminal offense." The term "encryption" is defined as the use of "any protective or disruptive measure, including, without limitation, cryptography, enciphering, encoding, or a computer contaminant," to prevent, impede, delay or disrupt access to data, to make data unintelligible or unusable, or to prevent, impede, delay or disrupt the normal operation or use of a component or device.

The court concluded that §5/16D-5.5(b)(1) is intended to apply only where the defendant engages in "some type of data transformation, manipulation, or destruction." Merely changing the password on another's social media account does not fall within this definition. Thus, defendant's conviction for unlawful use of encryption, which was based on changing his former girlfriend's password to her MySpace account, was reversed.

People v. Moreno, 2015 IL App (3rd) 130119 (No. 3-13-0119, 3/25/15)

1. Reckless discharge of a firearm is committed where a person discharges a firearm in a reckless manner and endangers the bodily safety of an individual. 720 ILCS 5/24-1.5(a). A person acts in a reckless manner when he or she consciously disregards a substantial and unjustifiable risk and that disregard constitutes a gross deviation from the standard of care that a reasonable person would exercise in the situation. 720 ILCS 5/4-6.

Thus, under the plain meaning of the statute the offense of reckless discharge of a firearm requires that the defendant recklessly discharge a firearm and endanger the bodily safety of an individual. The court concluded that the act of firing a .22 caliber pistol toward the ground is not *per se* reckless. In the course of its holding, the court noted testimony by one of the State's witnesses that a dirt pile is utilized at the Illinois State Police headquarters to absorb bullets fired at the range and that defendant fired into a grassy dirt area.

In addition, defendant did not engage in activity that was likely to cause death or bodily harm where at the time he fired live and blank rounds into the ground the other partygoers were behind him, "reducing their chances of being hit by a potential ricochet to virtually zero."

Under these circumstances, the State failed to prove the elements of reckless discharge of a firearm. The conviction was reversed and the cause was remanded for the recalculation of fees on the remaining conviction of unlawful possession of a controlled substance.

2. In dissent, Justice Wright found that other persons were in the area when defendant was firing the shots, both blank and live rounds had been fired, and police officers testified that firing a gun into ground that has not been prepared is dangerous because stones, rocks or areas of clay can cause a ricochet in any direction. Because defendant was not shooting in a controlled setting where the risk of harm to others was minimized, the incident took place in a residential neighborhood during a party, and persons including children were in the residence or in close proximity, Justice Wright would have found that defendant's actions were reckless.

(Defendant was represented by Assistant Defender Lucas Walker, Ottawa.)

Top

§16-1(b)
Disorderly Conduct

People v. Diomedes, 2014 IL App (2d) 121080 (No. 2-12-1080, 6/16/14)

1. At the time of defendant's conviction, 720 ILCS 5/26-1(a)(13) provided that disorderly

conduct occurred when one knowingly transmitted or caused to be transmitted "a threat of destruction of a school building or school property, or a threat of violence, death, or bodily harm directed against persons at a school, school function, or school event, whether or not school is in session." The court found that the knowledge requirement applied to all elements of subsection (a)(13). Thus, the offense required that the actor not only "knowingly" transmit a message, but also that he know that what was being transmitted was one of the prohibited threats.

Under the circumstances of this case, to establish a violation of §26-1(a)(13) the State was required to prove beyond a reasonable doubt that defendant knowingly transmitted a threat directed against a dean at his high school, and not merely that defendant knew that he was transmitting a message.

The court concluded that a rational trier of fact viewing the evidence most favorably to the State could have found beyond a reasonable doubt that defendant knowingly transmitted an email which he knew contained a threat directed against the dean. Therefore, the State satisfied its burden of proof.

2. Generally, the First Amendment prohibits government from proscribing speech because it disapproves of the ideas that are expressed. Restrictions on some forms of speech are permitted, however, including speech which contains a "true threat." True threats are statements intended to "communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals."

3. The court rejected defendant's argument that the email in question did not constitute a true threat and therefore could not support a conviction for disorderly conduct based on transmitting an emailed threat. Acknowledging a conflict in the case law, the court noted that whether a communication constitutes a true threat may be determined under one of two objective tests - whether a reasonable speaker would have foreseen that the communication would be interpreted as a threat, or whether a reasonable recipient would view the communication as a threat. The court found that the "reasonable speaker" test essentially encompasses the "reasonable recipient" test because it requires consideration of how others might interpret the communication.

The court concluded that even applying the defendant's preferred reasonable speaker approach, the email constituted a true threat. The court acknowledged that some factors weighed against finding that defendant made a true threat, including that the email was not as graphic as some communications found to constitute true threats in other cases, the message was not transmitted directly to the target of the alleged threat, and defendant had not made any specific prior threats against the target. The court concluded, however, that other factors supported a finding that the communication was a true threat, including that defendant had been expelled from high school for making threats on Facebook, the sole recipient of the email regarded it as a threat, defendant wanted to leave the alternative school environment in which he had been placed, defendant stated that he wanted to see the dean of his high school dead, and defendant had compiled a list of people whom he was going to kill. Under these circumstances, a reasonable speaker should have understood that the communication would be interpreted as a threat.

The conviction for disorderly conduct was affirmed.

(Defendant was represented by Assistant Defender Kathleen Weck, Chicago.)

People v. Shultz, 2011 IL App (3d) 100340 (No. 3-10-0340, 10/5/11)

Disorderly conduct is defined in relevant part as conduct in which an individual knowingly "[t]ransmits or causes to be transmitted a threat of destruction of a school building

or school property, or threat of violence, death, or bodily harm directed against *persons* at a school, school function, or school event, whether or not school is in session. 720 ILCS 5/26-1(a)(13).

The Statute on Statutes provides that "[i]n the construction of statutes, this Act shall be observed, unless such construction would be inconsistent with the manifest intent of the General Assembly or repugnant to the context of the statute." 5 ILCS 70/1. It also provides in relevant part that "[w]ords importing the singular number may extend and be applied to several persons or things and words importing the plural number may include the singular." 5 ILCS 70/1.03.

Applying the Statute on Statutes, the court held that the disorderly conduct statute is properly read to include both the singular and plural of the word "persons." Therefore, it reversed the circuit court's dismissal of an indictment for failure to state an offense where the indictment charged that defendant had directed threats against a single person.

Holdridge, J., dissented. Criminal or penal statutes must be strictly construed in defendant's favor. Even assuming that the Statute on Statutes applies to criminal statutes, §1.03 merely provides that words importing the plural number *may* include the singular. At most, application of the Statute on Statutes creates an ambiguity, which the rule of lenity requires be resolved in favor of the accused.

(Defendant was represented by Assistant Defender Glenn Sroka, Ottawa.)

Top

§16-1(c)
Official Misconduct

People v. Williams, 239 Ill.2d 119, 940 N.E.2d 50 (2010)

The official misconduct statute provides that a public employee commits misconduct when, in the public employee's official capacity, he knowingly performs an act he knows is forbidden by law. 720 ILCS 5/33-3(b).

At issue was whether the State proved that defendant performed an act forbidden by law. Defendant was a civilian employee of a police department and in her capacity as a dispatcher had alerted her boyfriend, a drug dealer, to police activity in his area. The State presented evidence that this communication violated the confidentiality rules and regulations of the department, which were adopted in 1985 and were in effect at the time of the conduct charged. The State offered no evidence at trial on the drafting of the rules, the process used in enacting them, or the government body that adopted them. The Supreme Court found this evidence insufficient to prove that the rules were enacted as an ordinance.

Before the Appellate Court, the State attached to its brief copies of the village ordinances governing the police department and minutes from a board of trustees meeting conducted in 1985. Assuming, without deciding, that it could take judicial notice of these minutes, the Supreme Court found that the minutes did not establish that the confidentiality rules were enacted as an ordinance. The minutes stated that the board approved a policies and procedure package, but there was no indication of its contents or that the confidentiality rules were part of that package. The minutes also stated that the package was approved, but not that it was enacted as an ordinance. The ordinances submitted by the State included a section authorizing the police chief to make rules and regulations that could be approved by

the village board and would govern all members of the department. This also furnished no proof that the confidentiality rules were enacted as an ordinance.

Absent evidence that any formal legislative process was used to enact the confidentiality rules, they could not be considered a law within the meaning of the official misconduct statute. The term "law" cannot be construed so broadly as to include rules promulgated solely by a person in authority of a governmental department or the administrative staff.

The Supreme Court affirmed the Appellate Court's judgment reversing defendant's conviction and entering a judgment of acquittal.

(Defendant was represented by Assistant Defender Brian McNeil, Chicago.)

People v. Dorrough, 407 Ill.App.3d 252, 944 N.E.2d 354 (1st Dist. 2011)

1. The offense of official misconduct is committed where "in his official capacity," a public employee "intentionally or recklessly fails to perform any mandatory duty as required by law." 720 ILCS 5/33-3(a). Official misconduct is a Class 3 felony which requires the public employee to forfeit his or her public employment.

For purposes of the official misconduct statute, the term "law" has been construed to include a civil or penal statute, a Supreme Court Rule, an administrative rule or regulation, or a requirement of a professional code. In **People v. Williams**, 239 Ill.2d 119, ___ N.E.2d ___ (2010), the Illinois Supreme Court held that police regulations that have not been enacted, sanctioned, or approved by a governing body do not constitute "laws" for purposes of the official misconduct statute.

2. The court concluded that police regulations governing the handling of evidence in criminal cases did not constitute "laws" within the meaning of the official misconduct statute, because there was no evidence that the regulations had been "enacted, sanctioned, or approved by a governing body." The court rejected the State's argument that **Williams** was inapplicable because it involved subsection (b) of the official misconduct statute, which prohibits public employees from knowingly performing acts known to be "forbidden by law," while defendant was charged under subsection (a), which prohibits the failure to perform any mandatory duty "as required by law." Identical words appearing in different parts of the same statute should be given similar meaning unless there is some indication that the legislature intended otherwise.

The convictions for official misconduct, which involved a police officer removing a handgun from evidence, giving it to the father of a suspect, and lying when questioned about the missing weapon, were reversed.

Top

§16-1(d)
Mob Action

Top

§16-1(e)

Interference with Judicial Procedure (Including Harassment of or Communication with a Witness or Juror); Harassing and Obscene Communications Act

People v. Nelson, 2013 IL App (3d) 120191 (No. 3-12-0191, 12/19/13)

720 ILCS 135/1-1(1) creates the offense of telephone harassment where a telephone is used for the purpose of making obscene, lewd, lascivious, filthy or indecent comments. 720 ILCS 135/1-1(2) creates the offense of telephone harassment for making a telephone call, whether or not conversation ensues, with intent to abuse, threaten, or harass any person at the number that was called.

Defendant was convicted of telephone harassment under subsections (1) and (2) of §135/1-1 for making four telephone calls to an elderly woman. Defendant suffered from Tourette's syndrome and obsessive compulsive tendencies, and presented uncontroverted expert testimony that he made the phone calls as part of a complex and uncontrollable "tic" caused by his illnesses. A defense expert testified that patients with Tourette's can perform complex actions as part of involuntary tics, that defendant could not control the tics without medication, and that selecting a phone number, dialing it, and saying lewd and offensive things may be part of a complex tic resulting from Tourette's.

1. To be convicted of a criminal offense, the defendant must perform a prohibited act with the prescribed mental state, unless the crime is an absolute liability offense for which there is no required mental state. For subsections (1) and (2), the required mental state is intent. A defendant acts intentionally when his conscious objective or purpose is to accomplish a result or engage in conduct that is proscribed by the statute.

In addition to proving that defendant had the required intent, the State must also prove beyond a reasonable doubt that defendant's actions were voluntary. It is a fundamental principle that a person is not criminally responsible for an involuntary act. A body movement which is not the result of the defendant's volition or control is an involuntary act for which the defendant cannot be held criminally liable.

2. The court found that there was no basis in the evidence on which a reasonable trier of fact could conclude that defendant acted voluntarily when he made the phone calls. The expert testimony showed that the calls were made as part of an involuntary tic that could not be controlled without medication. The State did not present expert testimony or otherwise refute the defense expert, and the trial court properly found that under the circumstances it had to adopt the uncontroverted expert testimony.

3. The court rejected the State's argument that defendant's failure to take prescribed medication constituted a voluntary act that would support the convictions. There was no evidence that defendant voluntarily stopped taking the medication. Instead, the only evidence was the testimony of the defense expert, who believed that defendant had run out of the medication and had been unable to obtain a new prescription. The State had an opportunity to question defendant about his failure to take the medication but failed to do so. Based on this record, no rational trier of fact could have inferred that defendant voluntarily stopped taking the medication with the intent of making harassing or offensive phone calls.

Under the circumstances, defendant's failure to take his medication was an omission rather than an affirmative act. An omission constitutes a voluntary act only if it involves the performance of a duty which the law imposes on the offender and which he is physically capable of performing. (720 ILCS 5/4-1) Here, there was no evidence that defendant had a legal duty to take the medication.

Because the State failed to prove that defendant committed a voluntary act, the evidence was insufficient to sustain the conviction. Because the conviction must be reversed,

the court declined to consider defendant's argument concerning lack of intent.

4. The court emphasized that its holding was narrow: due to the uncontroverted expert defense testimony, no rational trier of fact could have concluded that defendant acted voluntarily when he made the phone calls in question. The court stressed that acts performed pursuant to complex tics by persons with Tourette's disorders will not always be involuntary. Instead, whether an act is voluntary must be determined on the evidence presented in each case.

(Defendant was represented by Assistant Defender Rachel Moran, Chicago.)

People v. Scates, 393 Ill.App.3d 566, 914 N.E.2d 243 (4th Dist. 2009)

The offense of threatening a public official is committed where a person conveys "to a public official" a threat to injury to the official, his or her family, or his or her property. (720 ILCS 5/12-9(a)). The court concluded that an Assistant Attorney General is deemed a "public official" for purposes of this offense. (See also **COUNSEL**, §13-5(d)(3)(a)(1)).

(Defendant was represented by Assistant Defender Erica Clinton, Springfield.)

People v. Stuckey, 2011 IL App (1st) 092535 (No. 1-09-2535, 9/30/11)

1. "A person who, with intent to deter any party or witness from testifying freely, fully and truthfully to any matter pending in any court . . . forcibly communicates, directly or indirectly, to such party or witness any knowingly false information or threat of injury, or damage to the property or person of any individual or offers or delivers or threatens to withhold money or another thing of value to any individual" commits the offense of communicating with a witness. 720 ILCS 5/32-4(b).

The *mens rea* element of this offense requires that the State prove that defendant had the "intent to deter any party or witness from testifying freely, fully and truthfully." There are also three possible *actus reus* elements, only one of which must be proven in addition to the *mens rea* element: the defendant either (1) forcibly detained the witness; (2) communicated to the witness "knowingly false information or threat of injury, or damage to the property or person"; or (3) "offer[ed] or deliver[ed] or threaten[ed] to withhold money or another thing of value."

The verb "deter" means "to turn aside, discourage or prevent." Therefore, the statute is violated not only when the defendant intends to coerce a witness into altering his testimony or testifying falsely, but also when his intent is to prevent the witness from testifying at all.

2. The State presented evidence that defendant offered a witness $1000 in exchange for not testifying at trial, or threatened her with "something bad" if she did testify. A rational trier of fact could find from this evidence that the State proved that the defendant unlawfully communicated with a witness. The court affirmed defendant's conviction.

(Defendant was represented by Assistant Defender Bryon Reina, Chicago.)

Top

§16-1(f)
Threatening a Public Official

Top

§16-2
Resisting, Obstructing, and Offenses Against Police Officers

People v. Baskerville, 2012 IL 111056 (No. 111056, 2/17/12)

1. 720 ILCS 5/31-1(a) creates the offense of resisting or obstructing a peace officer where a person knowingly resists or obstructs the performance by a peace officer of any authorized act within the officer's official capacity. The court concluded that a physical act is not a required element of the offense of obstruction of an officer. Instead, §31-1(a) focuses on conduct which interposes an obstacle that impedes or hinders an officer in the performance of an authorized act. While a physical act may impede or hinder an officer in performing an authorized act, conduct which falls short of a physical act, such as furnishing false information or refusing to obey a lawful order to leave, may also constitute obstruction if it impedes an authorized act.

The court also noted that §31-1(a) prohibits both "obstructing" and "resisting" an officer. Because "resisting" implies some sort of physical exertion, the term "obstructing" would be superfluous if limited to the same meaning.

The court acknowledged that in **People v. Raby**, 40 Ill.2d 392, 240 N.E.2d 595 (1968), the Supreme Court found that obstructing an officer requires a physical act. The court limited **Raby**, however, noting that the conduct in question was going limp when officers attempted an arrest during a protest, and that First Amendment concerns were presented because the phrase "resists or obstructs" could be defined so broadly as to place citizens in jeopardy of arrest for disagreeing with an officer verbally or for expressing political speech.

Here, the alleged conduct was furnishing an officer with false information, an activity that is not protected by the First Amendment. Thus, this case does not present the First Amendment concerns which informed **Raby**.

2. The court concluded, however, that the evidence was insufficient to prove beyond a reasonable doubt that defendant obstructed an officer. To establish the offense of obstructing an officer, the State was required to show that: (1) defendant knowingly obstructed an officer, (2) the officer was performing an authorized act in his official capacity, and (3) defendant knew the officer was a peace officer. Here, the officer pursued defendant's wife for driving with a suspended license, and attempted to effect a traffic stop before defendant's wife walked in the house. When defendant came out of the house, he was asked to get his wife. He responded that his wife was not home. He then went back in the house, but returned a few minutes later and said he did not know what was going on but that the officer was free to search the house.

The officer was performing an authorized act in attempting to effect a traffic stop, and defendant knew that he was dealing with a police officer. However, the court found that defendant's statement concerning his wife's whereabouts did not impede the officer in light of the defendant's invitation to the officer to search the house:

> Even if [the officer] had probable cause to arrest [defendant's wife], and [the wife] thwarted his ability to arrest her in a public place, defendant consented to a search and [the officer] chose not to enter the home. Therefore, there was no evidence that defendant's statement hampered or impeded the officer's progress in any way.

The court noted the trial judge's finding that the wife could have been hiding in the home, making a search futile. Defendant was charged only with providing false information,

however, and not with concealing his wife. Furthermore, there was absolutely no evidence that defendant did anything to conceal his wife's whereabouts from the officer.

The conviction for obstructing a peace officer was reversed.

(Defendant was represented by Assistant Defender Jay Wiegman, Ottawa.)

People v. Comage, 241 Ill.2d 139, 946 N.E.2d 313 (2011)

The obstructing justice statute (720 ILCS 5/31-4(a)) provides that a person who "[d]estroys, alters, conceals or disguises physical evidence, plants false evidence, [or] furnishes false information" commits the offense of obstructing justice where he or she acts "with intent to prevent the apprehension or obstruct the prosecution or defense of any person." Defendant was charged with obstructing justice for throwing a cocaine pipe and push rod over a privacy fence while he was being pursued by police. Officers saw the defendant throw "two rod-like objects," which they found within ten feet of the defendant's location within 20 seconds after going to look for them.

1. Because §31-4(a) does not define the word "conceal," the court considered two definitions in Webster's dictionary from 1961, the year the statute was adopted. The first definition stated that to "conceal" is to "prevent disclosure or recognition" or to "withhold knowledge" of an object. The second definition stated that to "conceal" is to "place an object out of sight" or to "shield [an object] from vision or notice."

The Supreme Court found that the second definition could not have been intended by the legislature, because carrying contraband in a pocket or briefcase during an arrest would transform a minor possession offense into a felony merely because the contraband was out of sight. The court concluded that the legislature intended that only actual interference with the administration of justice would result in the offense of obstructing justice. In other words, to be convicted of obstructing justice one must perform conduct which "obstructs [the] prosecution or defense of [a] person."

Thus, a defendant who places evidence out of sight during an arrest or pursuit has "concealed" the evidence for purposes of the obstructing justice statute if by doing so, an investigation is impeded. Because the officers saw defendant throw the crack pipe and push rod over the fence, and were able to walk around the fence and recover the objects almost immediately, defendant did not materially impede the investigation although the items were briefly out of the officers' sight. Because the items were not "concealed" within the meaning of §31-4(a), the conviction for obstructing justice was reversed.

2. In a concurring opinion, Justice Freeman noted that Illinois case law has previously held that the act of concealing evidence must materially impede a police investigation in order to constitute the offense of obstructing justice. Because the General Assembly has not seen fit to amend §31-4(a) in light of those cases, Justice Freeman would have presumed that the legislature acquiesced in the court's statement of legislative intent.

3. In a dissenting opinion, Justices Thomas, Garman, and Karmeier held that persons who carry illegal items in a pocket, purse or briefcase would be guilty of obstructing justice only if they acted "with intent to prevent the apprehension or obstruct the prosecution or defense of any person." The dissent also found that an investigation is not materially impeded when a suspect merely throws evidence to the ground in view of a police officer, because the evidence is not destroyed or unlikely to be recovered. Here, defendant did not merely throw the items to the ground where they remained in plain view; he threw them over a privacy fence and out of the view of the pursuing officers.

In any event, the dissent urged the legislature to amend §31-4(a) to prohibit the affirmative act of concealing evidence by placing it out of the sight of police during a chase.

(Defendant was represented by Assistant Defender Colleen Morgan, Springfield.)

In re Q.P., 2014 IL App (3rd) 140436 (No. 3-14-0436, 10/27/14)

1. Obstruction of justice occurs "when, with intent to prevent the apprehension or obstruct the prosecution or defense of any person, [a person] knowingly . . . furnishes false information." 720 ILCS 5/31-4(a)(1). The term "apprehension" is not defined in the statute and is to be given its plain and ordinary meaning. However, criminal statutes are strictly construed in favor of the accused, and nothing is to be taken by implication from the obvious or ordinary meaning of the statute.

Adopting the ruling of **People v. Miller,** 253 Ill. App. 3d 1032**,** 628 N.E.2d 893 (2nd Dist. 1993), the court concluded that a person is "apprehended" when he or she is "seized" for purposes of the Fourth Amendment. A "seizure" does not necessarily involve a full "arrest," and occurs when an officer by means of physical force or show of authority in some way restrains a citizen's liberty.

Here, the minor's liberty was undoubtedly restrained when he was handcuffed and placed in the back seat of a patrol car because he was a suspect in a burglary. Thus, the minor had been "apprehended" even if he had not been subjected to an "arrest."

2. Because the minor had already been apprehended, he could not have intended to prevent his "apprehension" by giving the officer a false name and birth date. Thus, the minor did not commit obstruction of justice even if he hoped to keep the officer from discovering that there was an outstanding warrant on other charges. The court stated, "[O]ne who is presently seized by the police cannot be seized again."

Because the minor could not have had the specific intent to prevent his own apprehension where he had already been handcuffed and placed in a squad car when he gave false identifying information, the delinquency adjudication based on obstruction of justice was reversed.

(Defendant was represented by Assistant Defender Mark Fisher, Ottawa.)

People v. Berardi, 407 Ill.App.3d 575, 948 N.E.2d 98 (3d Dist. 2011)

720 ILCS 5/31-1 creates the offense of resisting a peace officer where a person "knowingly resists or obstructs the performance by one known to the person to be a peace officer, . . . of any authorized act within his official capacity . . ." Defendant, an alderman for the city of Canton, was convicted of resisting a peace officer after he failed to leave an office in City Hall.

Defendant went to City Hall in an attempt to examine the city budget, in accordance with a notice published in the local newspaper. When he arrived at City Hall, defendant was told by the Budget Director that the mayor had directed him to withhold the budget until the following week. Defendant and two other persons stood in an open office area adjacent to the Budget Director's locked office after the director left, and were told by the police chief that they had to leave so the area could be secured. Defendant refused to leave and insisted that as an alderman, he was entitled to be in the area.

The police chief stated that defendant would be arrested if he did not leave, and defendant stated that he was not going to leave. When the police chief stated, "[L]et's go downstairs," defendant walked with the chief to the booking department of the police department. He was arrested and charged with resisting an officer.

1. The court concluded that defendant's actions did not constitute resisting a peace officer. Under Illinois precedent, the offense of resisting an officer requires some physical act which "impedes, prevents or delays" the performance of an authorized act by a peace officer.

Section 31-3 does not prohibit one from arguing with a police officer about the validity of a police order. The court concluded that it was clear from the evidence, including a video recording of the encounter made by one of defendant's companions, that defendant merely argued with the police chief and stated his belief that he was entitled to remain in the area.

The court stressed that the entire incident took only a brief time, that defendant repeatedly stated his belief that he was authorized to remain in the office, and that when he was told to come to the police station defendant acquiesced. Under these circumstances, the record showed that defendant merely disputed the police chief's authority and did not attempt to hinder or delay the performance of an authorized act.

2. The court also noted, in passing, that the trial court erred by refusing to give an instruction which defendant tendered and which stated that mere verbal resistance or argument does not constitute resisting an officer. Because there was evidence to support defendant's argument that he merely challenged the validity of an order to leave a city office, the failure to give the tendered instruction removed a disputed issue from the jury's consideration. Thus, a new trial would have been required had the court not reversed the conviction for lack of evidence.

People v. Bohannon, 403 Ill.App.3d 1074, 936 N.E.2d 143 (5th Dist. 2010)

Specific terms covering the given subject matter prevail over general language of the same or another statute that might otherwise prove controlling.

Defendant was charged with obstructing a peace officer based on his refusal to produce his driver's license and proof of insurance when stopped by the police at a random safety checkpoint. The act that the police officer was authorized to perform and that defendant resisted were the same exact acts that the defendant was required to perform at the request of a law enforcement officer by the Illinois Vehicle Code. Because the acts of resistence and obstruction were subsumed in the provisions of the Illinois Vehicle Code, defendant could not be prosecuted for obstruction of a peace officer.

The Appellate Court affirmed the circuit court's dismissal of the charge.

(Defendant was represented by Assistant Defender John Gleason, Mt. Vernon.)

People v. Cervantes, 408 Ill.App.3d 906, 945 N.E.2d 1193 (2d Dist. 2011)

1. Resisting or obstructing a peace officer is committed where the defendant knowingly resists or obstructs an officer's performance "of any authorized act within his official capacity." (720 ILCS 5/31-1(a)). Resisting or obstructing a peace officer is enhanced to a Class 4 felony if the violation "was the proximate cause of an injury to a peace officer." (720 ILCS 5/31-1(a-7)).

The term "proximate cause" includes two distinct requirements: cause in fact, and legal cause. "Legal cause" is "essentially a question of foreseeability." Thus, "legal cause" exists where a reasonable person would see the type of injury in question as a likely result of his or her conduct.

2. The court rejected the argument that the weather conditions at the time of the incident were so extraordinary that defendant's conduct - leading officers on a chase through ice and snow-covered yards and driveways - could not be deemed the proximate cause of injuries inflicted on an officer who fell during the chase. The court concluded that it should have been reasonably foreseeable that running from officers who were attempting to make a traffic stop might result in a chase, and that an officer might be injured by falling in the slippery conditions.

Furthermore, defendant's acts were clearly a proximate cause of an injury which the

officer suffered when he climbed a fence. That injury was not related to the weather, and would have provided a sufficient basis to enhance the sentence without regard to other injuries.

3. The court rejected the argument that the defendant's conduct must be the "sole" proximate cause of an injury in order for the enhancement provision of 720 ILCS 5/31-1(a-7) to be applied. Thus, the State is required to show only that the defendant's actions were a contributing cause to the injury.

(Defendant was represented by Panel Attorney Clarke Devereux, Chicago.)

People v. Comage, 395 Ill.App.3d 560, 918 N.E.2d 1211 (4th Dist. 2009)

1. In **In re M.F.**, 315 Ill.App.3d 641, 734 N.E.2d 171 (2d Dist. 2000), the Appellate Court held that the defendant did not "conceal" evidence, for purposes of the offense of obstructing justice (720 ILCS 5/31-4(a)), when he threw baggies containing cocaine from his rooftop as police were coming up the stairs to execute a warrant. The baggies landed close to a police officer and were recovered within seconds.

The court distinguished **M.F.** because defendant did not merely abandon drug paraphernalia, but "took the more affirmative act of throwing the evidence over a privacy fence and out of the view of the police while . . . fleeing . . . at night." Although police quickly recovered the evidence, the court stressed that defendant could reasonably have anticipated that the officers might not see him throw the evidence over the fence.

Because defendant concealed evidence by throwing it over a fence as he was fleeing, the conviction for obstruction of justice was affirmed.

2. In dissent, Justice Pope found the case to be indistinguishable from **M.F.**

(Defendant was represented by Assistant Defender Colleen Morgan, Springfield.)

People v. Davis, 409 Ill.App.3d 457, 951 N.E.2d 230 (4 th Dist. 2011)

A person obstructs justice when, with intent to prevent the apprehension of any person, he knowingly destroys, alters, conceals, or disguises physical evidence, plants false evidence, or furnishes false information. 720 ILCS 5/31-4(a).

Defendant obstructed justice when she falsely informed the police that a person whom the police sought to arrest on a warrant was not in her house, even though she almost immediately recanted, acknowledged that the person was present, and consented to a search of her house, and the police apprehended the person in her house.

The court rejected defendant's reliance on **People v. Comage**, 241 Ill.2d 139, ___ N.E.2d ___ (2011), for the argument that there was no obstruction because defendant's brief denial did not materially impede the police investigation. According to the court, in **Comage**, the Supreme Court addressed concealment of evidence under the obstruction statute, whereas the case before it involved furnishing false information to the police. When the defendant places evidence momentarily out of sight, as in **Comage**, the defendant has not concealed evidence within the meaning of the obstruction statute because such an act does not make recovery of the evidence substantially more difficult or impossible. The risk that the evidence might be compromised is virtually nonexistent.

Where the defendant furnishes false information, the potential that the investigation will be compromised is exceedingly high, which is why such a crime may be completed at the moment false information is provided. Therefore, defendant was guilty of obstruction because when she lied to the police she impeded the officers by slowing down the progress of their investigation.

(Defendant was represented by Assistant Defender Colleen Morgan, Springfield.)

People v. Fernandez, 2011 IL App (2d) 100473 (No. 2-10-0473, 12/28/11)

One cannot be convicted of obstructing a peace officer for merely refusing to identify oneself to an officer. Refusing to provide one's name or other identification to the police is akin to "mere argument" that is insufficient to support an obstruction conviction. The provision in the Code of Criminal Procedure (725 ILCS 5/107-14) that permits a police officer conducting a **Terry** stop to "demand the name and address of the person and an explanation of his actions," only governs the conduct of police officers. There is no corresponding duty in the Criminal Code for a suspect to identify himself.

Defendant's conviction for obstruction was reversed because he was charged and convicted of refusing to identify himself to police officers, who were responding to a report from a movie theater of a patron who refused to leave, and found defendant standing outside the theater visibly intoxicated and smelling of alcohol.

(Defendant was represented by Assistant Defender Jack Hildebrand, Elgin.)

People v. Gordon, 408 Ill.App.3d 1009, 948 N.E.2d 282 (3d Dist. 2011)

To convict a defendant of obstructing a peace officer, the State must prove that the defendant obstructed the performance by a peace officer of any authorized act within his official capacity. 720 ILCS 5/31-1(a). "Obstruct" means "to be or come in the way of." Consistent with this definition, the failure or omission to take action may constitute obstruction. Inaction, such as refusing a police officer's lawful order to move out of the way, can constitute interference with the officer in the discharge of his or her duties.

After a traffic stop that resulted in defendant being ticketed for failing to wear a seat belt and another passenger being arrested for marijuana possession, the police repeatedly ordered defendant to leave the area while they waited for a tow truck. Defendant refused, became irate, and yelled profanities at the officers. The court concluded that these actions by defendant impeded the officers in their duties to arrest the other passenger and to search and tow the vehicle.

The court affirmed the conviction for obstruction of a peace officer.

McDade, J. dissented on the ground that the charging instrument failed to state an offense. The charge alleged that defendant obstructed the performance by the police of "an authorized act within [the officer's] official capacity, being the investigation of [defendant], . . . in that he . . . failed to disperse from the scene after being ordered to do so." Because defendant could not impede an investigation into his own criminal activity by remaining at the scene of the investigation, the facts alleged and found by the trial court to be true fail to constitute an offense. The defective charge is void and should be dismissed.

(Defendant was represented by Assistant Defender Steve Clark, Supreme Court Unit.)

People v. Jenkins, 2012 IL App (2d) 091168 (No. 2-09-1168, 1/19/12)

Defendant was convicted of obstructing justice based on responding falsely to a police officer's questioning concerning whether he had a son who drove a particular car. On appeal, he argued that the trial court erred by excluding the testimony of the son and of defendant's wife concerning the questions asked by the officer and the answers given by the defendant. Defendant's wife was present during the conversation, and defendant's son overheard the conversation because he was talking to his father over a cell phone when the police approached. At trial, the judge found that the testimony of the defendant's wife and son concerning the conversation was inadmissible hearsay.

The court found that the trial court committed several errors at trial, and reversed the conviction without remand after finding that the evidence was insufficient to convict of

obstructing justice. To obtain a conviction for obstructing justice, the State was required to prove that: (1) defendant knowingly furnished false information to the officer "as to whether he had a son," and (2) such false information was furnished with the intent to obstruct the prosecution of his son. Because there was no indication that defendant knew that a prosecution or criminal matter was involved, and the entire incident lasted but a few seconds before any confusion was clarified, the court concluded that there was insufficient evidence of an intent to obstruct a prosecution to sustain the reasonable doubt burden.

The conviction was reversed.

(Defendant was represented by Assistant Defender Patrick Carmody, Elgin.)

People v. Jones, 2015 IL App (2d) 130387 (No. 2-13-0387, 3/17/15)

1. The offense of obstructing a peace officer occurs where one knowingly obstructs the performance by one known to be a peace office "of any authorized act within his official capacity." 720 ILCS 5/31-1(a). An "authorized act" is an act of a type that the officer is authorized to perform.

Generally, an officer who is attempting to make an arrest is performing an authorized act. However, an attempted arrest which violates the Fourth Amendment is not an "authorized act" for purposes of §31-1. In the absence of a warrant or exigent circumstances, the Fourth Amendment prohibits police from entering a private residence. The State bears the burden of demonstrating exigent circumstances necessitating a warrantless search or arrest.

2. Here, defendant conceded that the officer was authorized to knock on the door of an enclosed porch at defendant's house in order to investigate a report of a loud argument including the sound of things breaking. In addition, the officer observed defendant and a woman arguing on the porch and saw that defendant was extremely intoxicated and belligerent. Under these circumstances, the officer was authorized to step onto the porch to see whether defendant's companion was injured or needed assistance.

However, once defendant stated that there was no problem and asked the officer to leave, and the officer saw that the companion was not visibly injured and did not require assistance, the officer was obligated to respect defendant's request that he leave the premises. At that point the officer's authority to remain in the enclosed porch ended.

Where the officer remained on the porch and attempted to arrest defendant, his actions violated the Fourth Amendment. Thus, the attempt to make an arrest was not an "authorized act" for purposes of the obstructing an officer statute.

Defendant's conviction for obstructing a peace officer was reversed. The conviction for aggravated battery to a peace officer was affirmed.

(Defendant was represented by Deputy Defender Thomas Lilien, Elgin.)

People v. Kotlinski, 2011 IL App (2d) 101251 (No. 2-10-1251, 10/21/11)

A person who knowingly resists or obstructs the performance by one known to the person to be a peace officer of any authorized act within his official capacity commits the offense of obstructing a peace officer. 720 ILCS 5/31-1(a). Innocent or inadvertent conduct is exempted from the statute's proscription. Passive acts that impede an officer's ability to perform his duties can be a violation of §31-1(a). But those acts must be committing "knowingly," which in the context of the obstruction statute requires that defendant be "consciously aware" that his conduct is "practically certain" to interfere with the performance of an authorized act. 720 ILCS 5/4-5(b). By its very nature, knowledge is ordinarily proved by circumstantial evidence.

The State charged that defendant committed the offense of obstructing a peace officer

when, as shown in a videotape, he exited the front passenger side of his vehicle, and stood at that side of the vehicle for 21-47 seconds as the police yelled at him to get back in his vehicle, halting the administration of a Breathalyzer test on his wife. Although the police testified that the defendant yelled at them as he stood outside of the car, the videotape showed this to be untrue.

1. Defendant's act of stepping out of the car was not an act of obstruction, because he had not been told to stay inside of the car while the police investigated his wife for a DUI violation. Defendant did delay 21-47 seconds before he complied with the officer's command to get back inside his car, but it was his act of stepping outside the car which interrupted the investigation, not his act of remaining outside the car. Moreover, the court questioned whether this short period of delay could constitute obstruction given that it was 3 a.m., close to zero degrees outside, both officers were screaming at defendant and threatening to tase him, defendant's wife was also screaming at him, and defendant appeared to be intoxicated.

2. Any inference that defendant knew that his act of getting out of the car was practically certain to interrupt the DUI investigation was dependent on proof that he knew that the officer was still administering field sobriety tests to his wife when he stepped outside. Defendant remained in the car while the officer administered the tests in defendant's view. It was only when the officer removed defendant's wife from his sight that defendant stepped out of the car. The only reasonable inference to be drawn from this evidence was that defendant stepped out of the car because he did not know what the officer was doing. His purpose in exiting was only to see what was happening to his wife. By standing next to his car, without advancing, speaking, or gesturing, defendant evinced no awareness that he was obstructing the investigation, any more that his watching from inside the vehicle had obstructed it.

Because no rational trier of fact could have found that the defendant violated §31-1(a), the court reversed defendant's conviction for obstructing a peace officer.

People v. Lipscomb, 2013 IL App (1st) 120530 (No. 1-12-0530, 9/30/13)

Aggravated fleeing or attempting to elude a police officer is committed "by any driver or operator of a motor vehicle who flees or attempts to elude a police officer, after being given a visual or audible signal by a police officer *** and such flight or attempt to elude *** is at a rate of speed at least 21 miles per hour over the legal speed limit." 625 ILCS 5/11-204.1(a)(1).

The only testimony related to the speed of defendant's car was an officer's testimony that the speed limit in the area was 15 to 20 mph, and that at some point as he pursued defendant for about a half block on one street, and about a half block on another street, he looked at his speedometer and it read 55 mph. There was no evidence as to the period of time he drove at this speed, whether it was constant, or whether he accelerated to this speed to catch up to defendant. There was no evidence of the relationship of the vehicles during the pursuit, such as whether the defendant pulled away from the officer, or whether the officer gained on the defendant.

The Appellate Court concluded that the trier of fact could not reasonably infer from this evidence that defendant was traveling at least 21 mph over the speed limit during the pursuit. It reduced defendant's conviction to the lesser-included offense of misdemeanor fleeing or attempting to elude a police officer.

(Defendant was represented by Assistant Defender Jonathan Yeasting, Chicago.)

People v. McClanahan, 2011 IL App (3d) 090824 (No. 3-09-0824, 8/23/11)

A person who is "in the lawful custody of a peace officer for the alleged commission of

a felony offense" and intentionally escapes from custody commits escape. 720 ILCS 5/31-6(c). "Lawful custody" is not defined by the Code. When interpreting the term "custody" under the escape statute, courts have focused on the amount of control the officer had over the defendant at the time of the arrest. A defendant is not in custody merely because the police inform the defendant that he is under arrest, where the police make no physical contact with the defendant. The police must actually restrain the defendant before he breaks free in order for defendant to commit escape. It is not enough that defendant evades the imposition of custody altogether.

The State proved that defendant was in custody where the officer physically restrained defendant and forcefully moved him to the hood of a squad car. Defendant then escaped from that custody where he ran when the officer had to use one hand to reach for his handcuffs.

Resisting arrest and escape contain different elements. Resisting occurs when defendant struggles with an arresting officer, while escape requires that the defendant actually break free. Because defendant broke free, rather than merely struggled with the officer, the defendant committed escape, even though he could have been additionally charged and convicted of resisting arrest for struggling with the officer.

(Defendant was represented by Assistant Defender Glenn Sroka, Ottawa.)

People v. Nasolo, 2012 IL App (2d) 101059 (No. 2-10-1059, modified 4/23/12)

Although a person may commit obstruction of a peace officer by means of a physical act, a physical act is neither an essential element nor the exclusive means of committing an obstruction. Focusing solely on whether the conduct is active or passive is overly simplistic. Rather, the focus should be on whether the defendant actually obstructed the officers in performing their duties. **People v. Baskerville**, 2012 IL 111056.

Defendant actually obstructed the police, regardless of whether she can be said to have committed a physical act, when she impeded the police from completing the booking process by her refusal to be fingerprinted or photographed. As her refusal was complete and caused more than a brief delay, the court affirmed her conviction.

(Defendant was represented by Assistant Defender Christopher McCoy, Elgin.)

People v. Shenault, 2014 IL App (2d) 130211 (No. 2-13-0211, 12/23/14)

1. 720 ILCS 5/31-1(a) provides that a person commits the offense of resisting or obstructing a police officer if he or she "knowingly resists or obstructs the performance by one known to the person to be a peace officer." Under Illinois law, resisting or obstructing an officer is not committed where a citizen merely argues with an officer about the validity of an arrest. Instead, the citizen must in some way impose an obstacle which impedes, hinders, interrupts, or delays the performance of the officer's duties. In **People v. Baskerville**, 2012 IL 111056, the Supreme Court held that the focus of §31-1(a) is whether the defendant's conduct tends to impose such an obstacle, and not merely whether a physical act occurred.

Where a driver or passenger refuses to comply with an order to exit the vehicle during a traffic stop, issues of officer safety are presented. "It seems clear that any behavior that actually threatens an officer's safety or even places an officer in fear for his or her safety is a significant impediment to the officer's performance of his or her duties." **People v. Synnott**, 340 Ill. App. 3d 223, 811 N.E.2d 236 (2nd Dist. 2004).

2. Here, defendant refused to get out of her car when ordered to do so during a traffic stop. After several requests, the officer removed the defendant's seatbelt, pulled her out of the vehicle, and placed her under arrest.

The court concluded that defendant's repeated refusals to exit her car required the

officer to place his safety at issue by forcibly removing her, and therefore impeded the officer in his authorized duties. The conviction was affirmed.

(Defendant was represented by Assistant Defender Richard Harris, Elgin.)

People v. Slaymaker, 2015 IL App (2d) 130528 (No. 2-13-0528, 2/3/15)

An individual commits the offense of resisting a peace officer where he or she resists a known officer's performance of an authorized act. Because an officer lacks authority to perform a weapons frisk during a community caretaking encounter, defendant's conviction was reversed.

(Defendant was represented by Assistant Defender Sherry Silvern, Elgin.)

People v. Smith, 2013 IL App (3d) 110477 (No. 3-11-0477, 2/22/13)

The offense of obstructing a peace officer has three elements: (1) defendant knowingly obstructed a peace officer; (2) the officer was performing an authorized act in an official capacity; and (3) defendant knew that the other individual was a peace officer. 720 ILCS 5/31-1(a). The term "obstruct" is not defined by §5/31-1(a), but is construed to include physical conduct that impedes or hinders progress. The court concluded that defendant committed the offense of obstructing a peace officer when he left his car while the officer was issuing a traffic citation and refused to return to the car at the officer's command. Although the officer had completed filling out the ticket and needed only to sign it, defendant's actions interfered with the authorized act of issuing the citation.

(Defendant was represented by Assistant Defender Kerry Bryson, Ottawa.)

People v. Taylor, 2012 IL App (2d) 110222 (No. 2-11-0222, 6/27/12)

A person obstructs justice when, with the intent to prevent the apprehension or obstruct the prosecution or defense of any person, he knowingly commits any of the following acts: (a) destroys, alters, conceals or disguises physical evidence, plants false evidence, or furnishes false information. 720 ILCS 5/31-4(a). False statements as well as physical acts may constitute obstruction, but the defendant's conduct must actually impose a material impediment to the administration of justice.

Defendant furnished a false name and denied that he had identification on him when he was stopped by the police. His false statements did not materially impede or interfere with his arrest on an outstanding warrant. The police recognized defendant from previous encounters and arrested him almost immediately despite his false statements. The entire encounter took no more than a few minutes.

The Appellate Court reversed defendant's conviction for obstruction of justice.

(Defendant was represented by Supervisor Josette Skelnik, Elgin.)

People v. Thomas, 2014 IL App (3d) 120676 (No. 3-12-0676, 10/27/14)

To prove defendant guilty of felony resisting arrest, the State had to prove that defendant knowingly resisted an officer in the performance of an authorized act and proximately caused injury to the officer. 720 ILCS 5/3-1(a), (a-7). In a stipulated bench trial, defendant stipulated to the evidence presented at the preliminary hearing and the motion to suppress. The court held that there was no evidence presented at either hearing that the officer was injured. The court thus reduced defendant's conviction to a Class A misdemeanor and remanded for re-sentencing.

(Defendant was represented by Assistant Defender Adrienne River, Chicago.)

People v. Williams, 393 Ill.App.3d 77, 910 N.E.2d 1272 (1st Dist. 2009)

A public officer or employee commits official misconduct where, while acting in an official capacity, he "[k]nowingly performs an act which he knows he is forbidden by law to perform." 720 ILCS 5/33-3(b). The defendant, a police dispatcher for the City of Glenwood, was convicted of official misconduct for knowingly performing an act "which she knew was forbidden by law to perform" – notifying Greg Stroud about police activity near his residence "in order to facilitate" his illegal drug-dealing. The State's evidence showed that Williams twice called Stroud from work on the day in question, that she conveyed confidential information during these phone calls, and that her conduct violated police department's rules and regulations regarding the dissemination of confidential information.

1. The Appellate Court reversed the conviction, finding that police department's rules and regulations are not "laws" as contemplated by §33-3(b). The court rejected the State's argument that directives from the Glenwood Police Department constitute administrative rules and regulations, finding that because neither the municipality of Glenwood nor its police department is an "administrative agency," police department rules and regulations are "not an expression of legislative policy and . . . do not have the force of law."

2. In dissent, Justice Murphy noted that the Illinois Supreme Court has recently expanded the definition of an unlawful predicate act for purposes of the official misconduct statute, so that violations of the state constitution are now included. **People v. Howard**, 228 Ill.2d 428, 888 N.E.2d 85 (2008). The dissent argued that a municipal ordinance passed by a home rule community should be treated identically to an administrative rule or regulation.

Justice Murphy concluded, "[S]ometimes breaking an issue down to the basics is helpful – when a police dispatcher alerts a drug dealer of potential police activity aimed at him, it has to be official misconduct. Put quite simply, if this case is not an example of official misconduct, then I do not know what is."

(Defendant was represented by Assistant Defender Brian McNeil, Chicago.)

(This summary was written by Deputy State Appellate Defender Daniel Yuhas.)

People v. Wilson, 404 Ill.App.3d 244, 935 N.E.2d 587 (3d Dist. 2010)

Resisting a peace officer is punishable as a Class 4 felony if defendant's act was "the" proximate cause of an injury to the officer. 720 ILCS 5/31-1(a-7).

The resisting instructions submitted to defendant's jury required the jury to find that defendant's act was "a" proximate cause of the injury. Defendant argued that this instruction was plain error because use of the article "a" in the instruction allowed the jury to convict using a lower, more inclusive standard than provided by statute.

The court found no error in the instruction. The court noted that 19 statutes contain the word "proximate cause," ten with the article "a" and nine with the article "the." Two statutes that contain the article "the" included the language "more than 50% of the proximate cause." If use of "the" meant there could be only a single cause of injury, the legislature's addition of the "more than 50%" language was unnecessary. The court also looked at IPI Civil Instruction 15.01, which defines "proximate cause" as "a cause which . . . produced the injury. It need not be the only cause, nor the last nor nearest cause. It is sufficient if it combines with another cause resulting in injury." The court concluded that "a" and "the" are interchangeable and "the" does not indicate that defendant's act must be the sole proximate cause.

(Defendant was represented by Assistant Defender Ryan Wilson, Springfield.)

People v. Wrencher, 2015 IL App (4th) 130522 (No. 4-13-0522, 4/30/15)

1. A defendant is entitled to a jury instruction on a lesser-included offense where there

is some slight evidence to support the lesser offense and a jury could rationally find the defendant guilty of the lesser offense but acquit him of the greater offense. The Appellate Court held that defendant, who was charged with two counts of aggravated battery of a police officer, was not entitled to a lesser-included jury instruction on the offense of resisting a peace officer. Utilizing the charging instrument approach, the Court found that resisting was a lesser-included offense of the first count of aggravated battery, but that the jury could not have rationally convicted defendant of resisting, but acquitted him of aggravated battery. As to the second count, the Court held that resisting was not a lesser-included offense.

The offense of resisting a peace officer has two elements: (1) the defendant knowingly resisted or obstructed a peace officer in the performance of any authorized act; and (2) the defendant knew the person he resisted or obstructed was a peace officer. 720 ILCS 5/31-1(a). To determine whether resisting was a lesser-included offense of aggravated battery, the Court employed the charging instrument approach. Under this test, the charging instrument need not expressly allege all the elements of the lesser offense. Instead, the elements need only be reasonably inferred from the language of the charging instrument.

2. The first count of aggravated battery alleged that defendant knowing caused bodily harm to the officer by digging his fingernails into the officer's hand, knowing he was a peace officer engaged in the execution of his official duties. 720 ILCS 5/12-4(b)(18). The Court held that the elements of resisting arrest could be reasonably inferred from the language of this count. Although the count did not expressly allege that defendant resisted or obstructed the officer, causing bodily harm increased the difficulty of the officer's actions, and thereby caused resistence or obstruction.

But the Court found that a rational jury could not have found that defendant's act of causing bodily harm could have constituted resisting but not aggravated battery. By knowingly digging his fingernails into the officer's hand, the only charged act of resistence, defendant necessarily committed aggravated battery. Thus it would have been rationally impossible to convict defendant of resisting but acquit him of aggravated battery.

3. The second count of aggravated battery alleged that defendant knowingly made contact of an insulting or provoking nature by spitting blood on the officer's hand, knowing that he was a peace officer engaged in the execution of his official duties. 720 ILCS 5/12-4(b)(18). The Court held that the elements of resisting arrest could not be reasonably inferred from the language of this count. Spitting is an act of contempt, not an act of resistence or obstruction. It thus did not show that defendant knew he would obstruct the officer by spitting blood. Instead, it only showed that he knew the officer would be disgusted and provoked.

(Defendant was represented by Assistant Defender Rikin Shah, Ottawa.)

Top

§16-3
Escape

People v. Esparza, 2014 IL App (2d) 130149 (No. 2-13-0149, 8/19/14)

Escape is a continuing offense which encompasses the entire period between the time the escape occurs and the time the defendant is returned to custody. Thus, a defendant who was 16 when he removed an electronic home monitoring bracelet from his ankle but 17 when he was arrested could be prosecuted either as a juvenile or an adult.

(Defendant was represented by Assistant Defender Jaime Montgomery, Elgin.)

People v. McClanahan, 2011 IL App (3d) 090824 (No. 3-09-0824, 8/23/11)

A person who is "in the lawful custody of a peace officer for the alleged commission of a felony offense" and intentionally escapes from custody commits escape. 720 ILCS 5/31-6(c). "Lawful custody" is not defined by the Code. When interpreting the term "custody" under the escape statute, courts have focused on the amount of control the officer had over the defendant at the time of the arrest. A defendant is not in custody merely because the police inform the defendant that he is under arrest, where the police make no physical contact with the defendant. The police must actually restrain the defendant before he breaks free in order for defendant to commit escape. It is not enough that defendant evades the imposition of custody altogether.

The State proved that defendant was in custody where the officer physically restrained defendant and forcefully moved him to the hood of a squad car. Defendant then escaped from that custody where he ran when the officer had to use one hand to reach for his handcuffs.

Resisting arrest and escape contain different elements. Resisting occurs when defendant struggles with an arresting officer, while escape requires that the defendant actually break free. Because defendant broke free, rather than merely struggled with the officer, the defendant committed escape, even though he could have been additionally charged and convicted of resisting arrest for struggling with the officer.

(Defendant was represented by Assistant Defender Glenn Sroka, Ottawa.)

People v. Rogers, 2012 IL App (1st) 102031 (No. 1-10-2031, 6/29/12)

Defendant was charged with escape under the Electronic Home Detention Law, 730 ILCS 5/5-8A-4.1, in that he knowingly violated a condition of the electronic-home-monitoring-detention program by failing to report to day reporting as required. To sustain its burden, the State had to establish that day reporting was a condition of the electronic-monitoring program.

The State failed to present any evidence that day reporting was a condition of electronic monitoring. An investigator testified that electronic monitoring and day reporting "work side by side," which would denote that they operate independently of each other. There was also evidence that electronic monitoring was a condition of day reporting, in which case defendant's failure to attend day reporting would not necessarily violate the terms of the electronic-monitoring program. The investigator testified that a court document existed in defendant's file stating that day reporting was a condition of electronic monitoring, but no such document was produced. The electronic-monitoring contract that defendant signed contained no provision requiring defendant to participate in day reporting. The contract made reference to additional rules and regulations, but the State adduced no evidence of those rules and regulations.

Because the State failed to prove that day reporting was in fact a condition of electronic monitoring, the Appellate Court reversed defendant's conviction for escape.

(Defendant was represented by Assistant Defender Linda Olthoff, Chicago.)

Top

§16-4
"Hate Crimes"